

Project 4323 - Proposed

STATE BOARD OF EDUCATION

Promulgating new regulation governing seclusion & restraint in public elementary & secondary school

CHAPTER 750

Regulations Governing the Use of Seclusion and Restraint in Public Elementary and Secondary Schools in Virginia

8VAC20-750-5. Application.

These regulations are applicable to all students and school personnel in the public elementary and secondary schools of the Commonwealth of Virginia, as defined in 8VAC20-750-20. These regulations govern the use of seclusion and restraint utilized for the purpose of behavioral intervention.

To comply with these regulations, school personnel must first determine whether the action constitutes restraint or seclusion, as defined in 8VAC20-750-10. If the action does not meet the definition, or if the action falls under any of the "does not include" portions of the definitions in 8VAC20-750-10, then school personnel may act within their reasonable discretion. If the action falls within the definition of restraint or seclusion, it may be used, but only under the circumstances described in 8VAC20-750-40 and 8VAC20-750-50, and is subject to the other requirements of this chapter. In addition, 8VAC20-750-30 identifies certain practices that constitute restraint or seclusion that may be detrimental to the health, safety or dignity of the student and that may never be used by school personnel.

8VAC20-750-10. Definitions related to permitted and prohibited actions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Aversive stimuli" means interventions that are intended to induce pain or discomfort to a student for the purposes of punishing the student or eliminating or reducing maladaptive behaviors, such as:

1. Noxious odors and tastes;
2. Water and other mists or sprays;
3. Blasts of air;
4. Corporal punishment as defined in § 22.1-279.1 of the *Code of Virginia*;
5. Verbal and mental abuse;
6. Forced exercise when:
 - a. The student's behavior is related to his disability;
 - b. The exercise would have a harmful effect on the student's health; or
 - c. The student's disability prevents participation in such activities.
7. Deprivation of necessities, including:
 - a. Food and liquid at a time it is customarily served;
 - b. Medication; or
 - c. Use of restroom.

"Corporal punishment" means the infliction of, or causing the infliction of, physical pain on a student as a means of discipline.

"Mechanical restraint" means the use of any material, device, or equipment to restrict a student's freedom of movement. The term "mechanical restraint" does not include the devices implemented by trained school personnel or used by a student that have been prescribed by an appropriate medical or related service professional and are used with parental consent and for the specific and approved purposes for which such devices were designed, such as:

1. Adaptive devices or mechanical supports used to achieve proper body position, balance or alignment to allow greater freedom of mobility than would be possible without the use of such devices or mechanical supports;
2. Vehicle restraints, including seat belts, when used as intended during the transport of a student in a moving vehicle;
3. Restraints for medical immobilization;
4. Orthopedically prescribed devices that permit a student to participate in activities without risk of harm; or
5. High chairs and feeding stations used for age or developmentally appropriate students.

"Pharmacological restraint" means a drug or medication used on a student to control behavior or restrict freedom of movement that is not: (i) prescribed by a licensed physician or other qualified health professional under the scope of the professional's authority for the standard treatment of a student's medical or psychiatric condition and (ii) administered as prescribed by a licensed physician or other qualified health professional acting under the scope of the professional's authority.

"Physical restraint" means a personal restriction that immobilizes or reduces the ability of a student to move freely. The term "physical restraint" does not include: (i) briefly holding a student in order to calm or comfort the student; (ii) holding a student's hand or arm to escort the student safely from one area to another; or (iii) the use of incidental, minor or reasonable physical contact or other actions designed to maintain order and control.

"Seclusion" means the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving.

Provided that no such room or space is locked, the term "seclusion" does not include: (i) time out, as defined in these regulations; (ii) in-school suspension; (iii) detention; (iv) student-requested breaks in a different location in the room or in a separate room; (v) removal of a student for a short period of time from the room or a separate area of the room to provide the student with an opportunity to regain self-control, so long as the student is in a setting from which he is not physically prevented from leaving; (vi) the removal of a student for disruptive behavior from a classroom by the teacher, as provided in § 22.1-276.2 of the *Code of Virginia*; or (vii) confinement of a student alone in a room or area from which the student is physically prevented from leaving during the investigation and questioning of the student by school employees regarding the student's knowledge of or participation in events constituting a violation of the code of student conduct, such as a physical altercation, or an incident involving drugs or weapons.

"Time-out" means a behavioral intervention in which the student is temporarily removed from the learning activity but in which the student is not confined.

8VAC20-750-20. Other definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Behavioral Intervention Plan" or "BIP" means a plan that utilizes positive behavioral interventions and supports to address: (i) behaviors that interfere with a student's learning or that of others; or (ii) behaviors that require disciplinary action.

"Board" means the Virginia Board of Education.

"Business day" means Monday through Friday, twelve months of the year, exclusive of federal and state holidays (unless holidays are specifically included in the designation of business days).

"Chapter" means these regulations.

"Calendar days" means consecutive days, inclusive of Saturdays and Sundays. Whenever any period of time fixed by this chapter expires on a Saturday, Sunday, or federal or state holiday, the period of time for taking such action shall be extended to the next day that is not a Saturday, Sunday, or federal or state holiday.

"Child with a disability" or "student with a disability" means a public elementary or secondary school student evaluated in accordance with the provisions of 8VAC20-81 as having an intellectual disability, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disability (referred to in 8VAC20-81 as an emotional disability), an orthopedic impairment, autism, traumatic brain injury, other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities who, by reason thereof, requires special education and related services. This also includes developmental delay if the school division recognizes this category as a disability under 8VAC20-81-80.M.3. If it is determined through an appropriate evaluation that a child has one of the disabilities identified but only needs related services, and not special education, the child is not a child with a disability under 8VAC20-81. If the related service required by the child is considered special education rather than a related service under Virginia standards, the child would be determined to be a child with a disability. As used in this chapter, the disability categories set forth in this definition and the terms "special education" and "related services" shall have the meanings set forth in 8VAC20-81-10.

"Day" means calendar day unless otherwise designated business day or school day.

"Department" means the Virginia Department of Education.

"Evaluation" means procedures used in accordance with 8VAC20-81 to determine whether a child has a disability and the nature and extent of the special education and related services the child needs.

"Functional behavioral assessment" or "FBA" means a process to determine the underlying cause or functions of a student's behavior that impede the learning of the student or the learning of the student's peers. A functional behavioral assessment may include a review of existing data or new testing data or evaluation as determined as set forth in 8VAC20-750-70.

"Individualized Education Program" or "IEP" means a written statement for a child with a disability that is developed, reviewed and revised at least annually in a team meeting in accordance with the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia* (8VAC20-81). The IEP specifies the individual educational needs of the child and what special education and related services are necessary to meet the child's educational needs.

"Individualized education program team" or "IEP team" means a group of individuals described in 8VAC20-81-110 that is responsible for developing, reviewing or revising an IEP for a child with a disability.

"School day" means any day, including a partial day, that students are in attendance at school for instructional purposes. The term has the same meaning for all students in school, including students with and without disabilities.

"School employee" and "school personnel" means individual(s) employed by the school division on a full- or part-time basis or as independent contractors or subcontractors as

instructional, administrative, and support personnel, and includes individuals serving as a student teacher or intern under the supervision of appropriate school personnel.

"Section 504 plan" means a written plan of modifications and accommodations under Section 504 of the Rehabilitation Act of 1973.

"Student" means any student, with or without a disability, enrolled in a public elementary or secondary school as defined in § 22.1-1 of the *Code of Virginia*. For purposes of these regulations, the term "student" shall also include those students (i) attending a public school on a less-than-full-time basis, such as those students identified in § 22.1-253.13:2.N of the *Code of Virginia*; (ii) receiving homebound instruction pursuant to 8VAC20-131-180 and as defined in 8VAC20-81-10, without regard to special education status; (iii) receiving home-based instruction pursuant to 8VAC20-81-10; and (iv) pre-school students enrolled in a program operated by a school division or receiving services from school division personnel.

As used in these regulations, "student" or "students" shall not include children meeting compulsory attendance requirements of § 22.1-254 of the *Code of Virginia* by: (i) enrollment in private, denominational, or parochial schools; (ii) receipt of instruction by a tutor or teacher of qualifications prescribed by the Board of Education and approved by the relevant division superintendent; or (iii) receipt of home instruction pursuant to § 22.1-254 of the *Code of Virginia*. With regard to restraint and seclusion, students placed through public or private means in a private day or residential school for students with disabilities shall be afforded the protections set forth in 8VAC20-671 et seq.

8VAC20-750-30. Prohibitions.

The following actions are prohibited in the public elementary and secondary schools in the Commonwealth of Virginia:

1. Use of mechanical restraints.
2. Use of pharmacological restraints.
3. Use of aversive stimuli.
4. Use of restraint or seclusion in any manner that restricts a student's breathing or harms the student.
5. Use of physical restraint or seclusion as: (a) punishment or discipline; (b) a means of coercion or retaliation; (c) a convenience; (d) to prevent property damage, or in any manner other than as provided in 8VAC20-750-40 and 8VAC20-750-50, below.
6. Use of corporal punishment.
7. Use of seclusion rooms or freestanding units not meeting the standards set forth in these regulations.
8. Use of restraint or seclusion when medically or psychologically contraindicated as stated in documentation by the IEP team, 504 team, school professionals, or by a licensed physician, psychologist or other qualified health professional under the scope of the professional's authority.

Nothing in this section shall be construed to prohibit physical restraint or seclusion under the conditions outlined in 8VAC20-750-40 and 8VAC20-750-50.

8VAC20-750-40. Use of physical restraint and seclusion.

A. Nothing in this chapter shall be construed to require a school division to employ physical restraint or seclusion in its schools. School divisions electing to use physical restraint and seclusion shall comply with the requirements of these regulations.

B. School personnel may implement physical restraint or seclusion only when other interventions are, or would be, in the reasonable judgment of the particular school personnel implementing physical restraint or seclusion in an emergency situation, ineffective and only to:

1. prevent a student from inflicting serious physical harm or injury to self or others;
2. quell a disturbance or remove a student from the scene of a disturbance in which such student's behavior or damage to property threatens serious physical harm or injury to persons;
3. defend self or others from serious physical harm or injury;
4. obtain possession of controlled substances or paraphernalia which are upon the person of the student or within the student's control; or
5. obtain possession of weapons or other dangerous objects that are upon the person of the student or within the student's control.

C. Physical restraint and seclusion shall be discontinued as soon as the imminent risk of serious physical harm or injury to self or others presented by the emergency situation has dissipated.

D. Nothing in this section shall be construed to require school personnel to attempt to implement a less restrictive intervention prior to using physical restraint or seclusion when, in the reasonable judgment of the school personnel in an emergency situation, a less restrictive intervention would be ineffective.

E. Unless a student's damage to property creates an imminent risk of serious physical harm or injury to the student or others, the damage of property does not itself indicate an imminent risk of serious physical harm or injury and shall not be the justification for the restraint or seclusion of a student.

F. Any incident involving physical restraint or seclusion in any of the circumstances described above shall be subject to the requirements of 8VAC20-750-50 through 8VAC20-750-100, inclusive.

8VAC20-750-50. Seclusion; standards for use.

A. School divisions electing to use seclusion as permitted by this chapter shall meet the following structural and physical standards for rooms designated by the school to be used for seclusion:

1. Any seclusion room or area shall be free of any objects or physical features that may cause injury to the student.
2. Any seclusion room or area shall be of sufficient dimensions, and shall have sufficient lighting, heating, cooling and ventilation to comport with the dignity and safety of the student.
3. Windows in the seclusion room shall be constructed to minimize breakage and otherwise prevent the occupant from harming himself.
4. All space in the seclusion room shall be visible through the door, either directly or by mirrors.

B. School divisions electing to use seclusion as authorized by this chapter shall provide for the continuous visual monitoring of any seclusion, either by the presence of school personnel in the seclusion room or area or observation by school personnel through a window, viewing panel, or half-door.

C. School divisions electing to use seclusion as authorized by this chapter shall include within its local policies and procedures provisions that address the appropriate use and duration of seclusion based upon the age and development of the student.

8VAC20-750-60. Notification and reporting.

A. When any student has been physically restrained or secluded:

1. the staff member involved shall report the incident and the use of any related first aid to the school principal or designee as soon as possible by the end of the school day in which the incident occurred; and
2. the school principal or his designee, or other school personnel shall make a reasonable effort to ensure that direct contact is made with the parent, either in person or through telephone conversation, or other means of communication authorized by the parent, such as email, to notify the parent of the incident and any related first aid on the day the incident occurred.

B. When any student has been physically restrained or secluded after the regular school day, the notifications required by Subsection A shall be made as soon as practicable in compliance with the school division's school crisis, emergency management, and medical emergency response plan required by § 22.1-279.8 of the *Code of Virginia*.

C. As soon as practicable, but no later than two school days after an incident in which physical restraint or seclusion has been implemented, the school employee involved in the incident or other school personnel, as may be designated by the principal, shall complete and provide to the principal or designee, a written incident report. The school division shall provide the parent with a copy of the incident report within seven (7) calendar days of the incident.

The written incident report shall contain information sufficient to inform the parent about the incident. Such information would typically include the following:

1. Student name, age, gender, grade, and ethnicity;
2. Location of the incident;
3. Date, time, and total duration of incident, including documentation of the beginning and ending time of each application of physical restraint or seclusion;
4. Date of report;
5. Name of person completing the report;
6. The school personnel involved in the incident, their roles in the use of physical restraint or seclusion, and their completion of the division's training program;
7. Description of the incident, including the resolution and process of return of the student to his educational setting, if appropriate;
8. A detailed description of the physical restraint or seclusion method used;
9. The student's behavior that justified the use of physical restraint or seclusion;
10. Description of prior events and circumstances prompting the student's behavior, to the extent known;
11. Less restrictive interventions attempted prior to the use of physical restraint or seclusion, and an explanation if no such interventions were employed;
12. Whether the student has an IEP, a Section 504 plan, a BIP, or other plan;
13. If a student, staff member or any other individual sustained bodily injury, the date and time of nurse or response personnel notification and the treatment administered, if any;
14. Date, time, and method of parental notification of the incident, as required by this section; and

15. Date, time, and method of staff debriefing.

D. Following an incident of physical restraint or seclusion, the school division shall ensure that, within two (2) school days, the principal or designee reviews the incident with all staff persons who implemented the use of physical restraint or seclusion to discuss:

1. Whether the use of restraint or seclusion was implemented in compliance with this chapter and local policies; and
2. How to prevent or reduce the future need for physical restraint or seclusion.

E. As appropriate depending on the student's age and developmental level, following each incident of physical restraint or seclusion, the school division shall ensure that, as soon as practicable, but no later than two (2) school days or upon the student's return to school, the principal or designee shall review the incident with the student(s) involved to discuss:

1. Details of the incident in an effort to assist the student and school personnel in identifying patterns of behaviors, triggers or antecedents; and
2. Alternative positive behaviors or coping skills the student may utilize to prevent or reduce behaviors that may result in the application of physical restraint or seclusion.

F. The principal or designee shall regularly review the use of physical restraint or seclusion to ensure compliance with school division policy and procedures, and, when there are multiple incidents within the same classroom or by the same individual, the principal or designee shall take appropriate steps to address the frequency of use.

8VAC20-750-70. Policies and procedures.

A. Each school division that elects to use physical restraint or seclusion shall develop and implement written policies and procedures that meet or exceed the requirements of this chapter and that include, at a minimum, the following:

1. A statement of intention that the school division will encourage the use of positive behavioral interventions and supports to reduce and prevent the need for the use of physical restraint and seclusion.
2. Examples of the positive behavioral interventions and support strategies consistent with the student's rights to be treated with dignity and to be free from abuse that the school division uses to address student behavior, including the appropriate use of effective alternatives to physical restraint and seclusion.
3. A description of initial and advanced training for school personnel that addresses: (i) appropriate use of effective alternatives to physical restraint and seclusion; and (ii) the proper use of restraint and seclusion.
4. A statement of the circumstances in which physical restraint and seclusion may be employed, which shall be no less restrictive than that set forth in 8VAC20-750-40 and 8VAC20-750-50.
5. Provisions addressing the:
 - a. notification of parents regarding incidents of physical restraint or seclusion, including the manner of such notification;
 - b. documentation of the use of physical restraint and seclusion;
 - c. continuous visual monitoring of the use of any physical restraint or seclusion to ensure the appropriateness of such use and the safety of the student being physically restrained or secluded, other students, school personnel, and others. These provisions shall include exceptions for emergency situations in which securing visual monitoring before implementing the physical restraint or seclusion would, in the reasonable judgment of the school employee implementing the physical restraint or seclusion, result in serious physical harm or injury to persons; and

d. securing of any room in which a student is placed in seclusion. These provisions shall ensure that any seclusion room or area meet specifications for size and viewing panels that ensure the student's safety at all times, including during a fire or other emergency, as required by this chapter.

B. School divisions utilizing school resource officers shall enter into a Memorandum of Understanding with local law enforcement addressing the use of seclusion and restraint by law enforcement personnel in school settings.

C. Each school division shall review its policies and procedures regarding physical restraint and seclusion at least annually, and shall update these policies and procedures as appropriate. In developing, reviewing, and revising its policies, school divisions shall consider the distinctions in emotional and physical development between elementary and secondary students and between students with and without disabilities.

D. Consistent with § 22.1-253.13:7.D, a current copy of a school division's policies and procedures regarding restraint and seclusion shall be posted on the school division's website and shall be available to employees and to the public. School boards shall ensure that printed copies of such policies and procedures are available as needed to citizens who do not have online access.

E. In developing its policies and procedures, school divisions shall give due consideration to practices that encourage parent involvement and collaboration with regard to these matters.

8VAC20-750-80. Prevention; multiple uses of restraint or seclusion.

A. In the initial development and subsequent review and revision of a student's IEP or Section 504 plan, the student's IEP or Section 504 team shall consider whether the student displays behaviors that are likely to result in the use of physical restraint or seclusion. If the IEP or Section 504 team determines that a future use is likely, the team shall consider, among other things, the need for: (i) an FBA; (ii) a new or revised BIP that addresses the underlying causes or purposes of the behaviors as well as de-escalation strategies, conflict prevention, and positive behavioral interventions; (iii) any new or revised behavioral goals; and (iv) any additional evaluations or reevaluations.

Within ten (10) school days following the second school day in a single school year on which an incident of physical restraint or seclusion has occurred, the student's IEP or 504 team shall meet to discuss the incident and to consider, among other things, the need for: (i) an FBA; (ii) a new or revised BIP that addresses the underlying causes or purposes of the behaviors as well as de-escalation strategies, conflict prevention, and positive behavioral interventions; (iii) any new or revised behavioral goals; and (iv) any additional evaluations or reevaluations.

B. For students not described in Subsection A, within ten (10) school days of the second school day in a single school year on which an incident of physical restraint or seclusion has occurred, a team consisting of the parent, the principal or designee, a teacher of the student, a staff member involved in the incident (if not the teacher or administrator already invited), and other appropriate staff members, such as a school psychologist, school counselor, or school resource officer, as determined by the school division, shall meet to discuss the incident and to consider, among other things, the need for: (i) an FBA; (ii) a new or revised BIP that addresses the underlying causes or purposes of the behaviors as well as de-escalation strategies, conflict prevention, and positive behavioral interventions; and (iii) a referral for evaluation.

C. Nothing in this section shall be construed to (i) excuse the team or its individual members from the obligation to refer the student for evaluation if the team or members have reason to suspect that the student may be a student with a disability; or (ii) prohibit the completion of an FBA or BIP for any student, with or without a disability, who might benefit from these measures but whose behavior has resulted in fewer than two incidents of physical restraint or seclusion in a single school year.

8VAC20-750-90. Annual Reporting.

The principal or designee shall submit to the division superintendent a report on the use of physical restraint and seclusion in the school based on the individual incident reports completed and submitted to the principal or designee by school personnel pursuant to 8VAC20-750-60.C, above. The division superintendent shall annually report the frequency of such incidents to the Superintendent of Public Instruction on forms that shall be provided by the Department of Education and shall make such information available to the public.

8VAC20-750-100. Training.

School divisions that employ physical restraint or seclusion shall:

- A. ensure that all school personnel receive initial training that focuses on skills related to positive behavior support, conflict prevention, de-escalation, and crisis response;
- B. ensure that all school personnel receive initial training regarding the regulations, policies, and procedures governing the use of physical restraint and seclusion;
- C. provide advanced training in the use of physical restraint and seclusion for at least one administrator in every school building, and for personnel assigned to work with any student whose IEP or Section 504 team determines the student is likely to be physically restrained or secluded; and
- D. ensure that any initial or advanced training is evidence-based.

8VAC20-750-110. Construction and Interpretation.

Nothing in this chapter shall be construed to modify or restrict:

- A. the initial authority of teachers to remove students from a classroom pursuant to § 22.1-276.2 of the *Code of Virginia*;
- B. the authority and duties of school resource officers and school security officers, as defined in § 9.1-101 of the *Code of Virginia*, except to the extent governed by a Memorandum of Understanding between the local law enforcement agency and the school division;
- C. the authority of the Virginia Department of Juvenile Justice with regard to students in its custody at any of its sites or in any of its programs;
- D. the civil immunity afforded teachers employed by local school boards for any acts or omissions resulting from the supervision, care or discipline of students when such acts or omissions are within such teacher's scope of employment and are taken in good faith in the course of supervision, care, or discipline of students, unless such acts or omissions were the result of gross negligence or willful misconduct, as provided in 8.01-220.1:2 of the *Code of Virginia*.